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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,800	02/23/2004	Fausto Pinna	249175US0	5473

22850 7590 11/16/2007  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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LEWIS, KIANDRA CHARLE

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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11/16/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

**Office Action Summary**

Application No.

10/782,800

Applicant(s)

PINNA ET AL.

Examiner

Kiandra C. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 10/19/07
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 41 and 43-45 rejected under 35 U.S.C. 103(a) as being unpatentable over Kundel 5,480,717 in view of Neilsen WO 02/05737 and in further view of McDevitt et al. US 7,012,169.

As to claims 41 and 45, Kundel discloses hydrogel laminate bandages and composites, thereby disclosing breathable pads (c01.6, line 14-17), for application to the human skin, to develop a decongestant, cosmetic and/or pharmaceutical action (col. 4, lines 35-40). The pad comprises a flexible porous support (col. 4, lines 62-66) having at least one layer of gel applied to a surface. The support can be woven or nonwoven fabrics (column 4, lines 62-67), which are to some extent flexible, porous and breathable. The gel comprises between 50% and 77% of water and between 6.5% and

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44% of a dermatologically compatible polymer (polyvinyl alcohol, col. 4, lines 34-35 and 51-54). Kundel does not disclose that the layer of gel is applied directly to the porous support. Nielson teaches applying a hydrogel (2) directly to a support (1) with no adhesive between to obtain the highest permeability (page 5, line 22-page 6 line 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the bandage disclosed by Kundel wherein the hydrogel is applied directly to the support, as taught by Nielsen et al, to provide the maximum permeability throughout the bandage. Kundel and Neilsen substantially disclose the invention as claimed but do not expressly state that gel further comprises a volatile substance selected from an essential plant oil or an aromatic plant extract, which is drawn out and released through the flexible porous support when the gel layer of the breathable pad is applied to the skin. McDevitt et al. teach the use of a device that can be used to treat wounds, cuts, blisters and joint related ailments (abstract, col. 5, lines 58-62). McDevitt et al. further teach that in the device one can use plant extracts such as eucalyptus (col. 11, lines 14-18). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to include a volatile substance from an essential plant oil or an aromatic plant extract in the pad of the device of Kundel and Neilsen as taught by McDevitt et al. for the purpose of increasing the therapeutic properties of the device.

As to claim 43, the above combination teaches Eucalyptus (col. 11, lines 14-18).

As to claim 44, the above combination teaches the volatile substance to be in the porous support (col. 4, lines 60-62).

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiandra C. Lewis whose telephone number is 571-272-7517. The examiner can normally be reached on Mon-Thurs 9AM-6PM and alternating Fridays 9AM-5PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCL



11/13/07



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11/13/07